

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-000994

05/25/2016

HONORABLE DAWN M. BERGIN

CLERK OF THE COURT  
C. EWELL  
Deputy

MARIE CUTRER

ROBERT D MITCHELL

v.

VICTORIA STANSELL

VICTORIA STANSELL  
534 S CLEARVIEW AVE  
MESA AZ 85208

MINUTE ENTRY

The Court has reviewed the following:

- Defendant's Motion to Dismiss filed on February 23, 2016 and Plaintiff's Response;
- Plaintiff's Motion to Strike Defendant's Insufficient Affirmative Defenses and Improper Request for Fees filed on March 14, 2016. Plaintiff did not file a response.
- Plaintiff's Notice of No Response and Request for Summary Disposition of Plaintiff's Motion to Strike Defendant's Insufficient Affirmative Defenses and Improper Request for Fees.

**Motion to Dismiss**

Plaintiff has asserted multiple tort claims against Defendant, all of which are related to Defendant's posting of false and defamatory comments about Plaintiff and her business. Defendant argues that the Complaint must be dismissed because: (1) the Court lacks subject

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matter jurisdiction; (2) venue is improper; and (3) Plaintiff has failed to state a claim upon which relief can be granted. Each of these arguments fails.

First, for the reasons set forth by Plaintiff in her response, this Court has subject matter jurisdiction over this case. Second, venue is proper because, among other things, Defendant resides in Maricopa County.

Defendant claims that Plaintiff has failed to state a claim because the information she posted about Plaintiff was true. Arizona law, however, requires the Court to assume the truth of the allegations pled when ruling on a motion to dismiss. *Turley v. Ethington*, 213 Ariz. 640, 642, 146 P.3d 1282, 1284 (App. 2006). Plaintiff alleges that the information posted by Defendant was false. She has therefore stated a claim upon which relief can be granted.

**IT IS THEREFORE ORDERED** denying Defendant's Motion to Dismiss.

**Motion to Strike**

Plaintiff seeks to "strike" certain affirmative defenses alleged by Defendant in her answer, as well as Defendant's request for fees, arguing that they are legally insufficient. Rule 7.1 governs the use of motions to strike and provides that: "[u]nless made at trial or an evidentiary hearing, a motion to strike may be filed only if it is expressly authorized by statute or other rule, or if it seeks to strike any part of a filing or submission on the ground that it is prohibited, or not authorized, by a specific statute, rule, or court order." Because a motion to strike affirmative defenses and requests for fees is not authorized by statute, and the assertion of affirmative defenses and requests for fees in answers is not prohibited by a specific statute, rule or court order, Plaintiff's motion to strike is improper.

**IT IS THEREFORE ORDERED** denying Plaintiff's Motion to Strike Defendant's Insufficient Affirmative Defenses and Improper Request for Fees.